

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA	:	CRIMINAL ACTION
	:	
v.	:	
	:	
STANLEY SANDERS	:	NO. 06-173

MEMORANDUM AND ORDER

GENE E.K. PRATTER, J.

NOVEMBER 27, 2006

INTRODUCTION

Stanley Sanders, charged with two counts of bank robbery, seeks to exclude the trial testimony of several lay witnesses who reportedly identified him from surveillance photographs taken during the robberies in question when the photographs were subsequently published in the newspaper as part of the law enforcement effort to locate the alleged robber. According to Mr. Sanders, the proposed lay witness testimony does not meet the threshold requirements enumerated in Rule 701 of the Federal Rules of Evidence. The Court disagrees and will deny the motion in limine.

The proposed witnesses are co-workers of Mr. Sanders as well as employees at a Veterans Administration Center that Mr. Sanders frequents. According to the Government, these individuals all have identified Mr. Sanders as the robber shown in a series of bank surveillance photos showing the January 11, 2006 and February 1, 2006 robberies in progress. When these witnesses testify at trial they are expected to confirm their respective prior identifications of the Defendant. The Government asserts that because these witnesses base their identifications of Mr.

Sanders upon their personal acquaintance with him, their testimony is properly admissible. The Court agrees that, based upon the representations made thus far to the Court on this issue, Mr. Sanders's motion should be denied.

DISCUSSION

Rule 701 of the Federal Rules of Evidence permits lay opinion testimony that is “rationally based on the perception of the witness” and “helpful to a clear understanding of the witness’s testimony or the determination of a fact in issue.” Fed. R. Evid. 701. See also United States v. Kleinpaste, 124 Fed. Appx. 134, 139 (3d Cir. 2005). Certainly, “[t]he modern trend favors admissibility of opinion testimony.” Gov’t of Virgin Islands v. Knight, 989 F.2d 619, 630 (3d Cir. 1993) (quoting United States v. Leo, 941 F.2d 181, 193 (3d Cir. 1991)). Weaknesses in the witness’s perceptions or conclusions presumably will be exposed by cross-examination. Id.

As represented by the Government, these proposed witnesses have had sufficient prior personal contact with Mr. Sanders to provide a sufficient quantum of familiarity¹ to make their testimony helpful to the jury members. To be sure, the jurors also will be comparing the surveillance photos to Mr. Sanders, but without having had the same opportunity as the witnesses to have observed Mr. Sanders in settings other than the courtroom and at earlier times closer to the time the surveillance photos were taken when he reportedly looked different than he does now or than he will at the time of trial. Case law from a wide range of circuits approves of the admissibility of lay witness opinion testimony under such circumstances. See, e.g., United States v. Beck, 418 F.3d 1008, 1015 (9th Cir. 2005); United States v. Pierce, 136 F.3d 770, 774-75

¹ Mr. Sanders does not dispute that the proposed witnesses are sufficiently familiar with his appearance. (Defendant’s Mem. 5.)

(11th Cir. 1998); United States v. Jackman, 48 F.3d 1, 4-5 (1st Cir. 1995); United States v. Stormer, 938 F.2d 759, 761-62 (7th Cir. 1991); United States v. Wright, 904 F.2d 403, 405 (8th Cir. 1990). This is even appropriate if the robbery surveillance photos are of better-than-usual quality, as Mr. Sanders argues they may be here,² inasmuch as the jury remains free to accept or reject the witnesses' opinions. The jury will be so instructed by the Court. On balance, the Court finds that the proposed testimony will be useful to the jurors as they undertake their duty as finders of fact because the witnesses will be available to explain what it is they recognize (or do not recognize) about the person as depicted on the photos and why they do (or do not) believe the person in the photos is Mr. Sanders.

CONCLUSION

For the foregoing reasons, the defense Motion in Limine will be denied. An Order consistent with this Memorandum follows.

² The Government disputes the assertion that these photos are clear, or, as Mr. Sanders argues, "relatively clear." (See Defendant's Mem. 6.) Indeed, the Government contends that most of the photos are "fuzzy" or "blurry" and/or obscure large parts of the robber's face or body.

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ORDER

AND NOW, this 27th day of November, 2006, upon consideration of Defendant's Motion In Limine to Exclude Lay Witness Testimony (Docket No. 37) and the Government's response thereto (Docket No. 43), it is hereby ORDERED that the Defendant's Motion is DENIED.

BY THE COURT:

/s/ Honorable Gene E.K. Pratter
GENE E.K. PRATTER
United States District Judge